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SENATE BILL 788

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PERMITTING A RETIRED STATE POLICE MEMBER OR A RETIRED POLICE MEMBER TO RETURN TO WORK WITHOUT WAITING NINETY DAYS IF THE RETURN IS FOR THE PURPOSE OF TAKING THE PLACE OF A PUBLIC EMPLOYEE MEMBER CALLED TO ARMED FORCES ACTIVE DUTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT-- BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of

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1 retirement:

2 (1) a written application for normal
3 retirement, in the form prescribed by the association, is filed
4 with the association;

5 (2) employment is terminated with all
6 employers covered by any state system or the educational
7 retirement system;

8 (3) the member selects an effective date of
9 retirement that is the first day of a calendar month; and

10 (4) the member meets the age and service
11 credit requirement for normal retirement specified in the
12 coverage plan applicable to the member.

13 B. The amount of normal retirement pension is
14 determined in accordance with the coverage plan applicable to
15 the member.

16 C. Except as provided in Subsection D, [~~or~~] E or F
17 of this section, a retired member may be subsequently employed
18 by an affiliated public employer if the following conditions
19 apply:

20 (1) the member has not been employed as an
21 employee of an affiliated public employer for at least ninety
22 consecutive days from the date of retirement to the
23 commencement of employment or reemployment with an affiliated
24 public employer. If the retired member returns to employment
25 without first completing ninety consecutive days of

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1 retirement:

2 (a) the retired member's pension shall
3 be suspended immediately and the previously retired member
4 shall become a member; and

5 (b) upon termination of the subsequent
6 employment, the previously retired member's pension shall be
7 calculated pursuant to Paragraph (2) of Subsection E of this
8 section;

9 (2) effective the first day of the month
10 following the month in which the retired member's earnings
11 total twenty-five thousand dollars (\$25,000) during a calendar
12 year, a retired member who returns to employment shall be
13 required to make contributions to the fund as specified in the
14 Public Employees Retirement Act; provided, however, that after
15 December 31, 2006, no additional contributions shall be
16 required pursuant to this paragraph;

17 (3) until the subsequent employment is
18 terminated, the affiliated public employer that employs the
19 retired member shall make contributions to the fund in the
20 amount specified in the Public Employees Retirement Act or in a
21 higher amount adjusted for full actuarial cost as determined
22 annually by the association; and

23 (4) a retired member who returns to employment
24 during retirement pursuant to this subsection is entitled to
25 receive retirement benefits but is not entitled to acquire

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1 service credit or to acquire or purchase service credit in the
2 future for the period of the retired member's reemployment with
3 an affiliated public employer.

4 D. The provisions of Paragraphs (2) and (3) of
5 Subsection C of this section that require employee or employer
6 contributions do not apply to:

7 (1) a retired member who is appointed chief of
8 police of an affiliated public employer, other than the
9 affiliated public employer from which the retired member
10 retired, or who is appointed undersheriff; provided that:

11 (a) the retired member files an
12 irrevocable exemption from membership with the association
13 within thirty days of appointment;

14 (b) each sheriff's office shall be
15 limited to one undersheriff qualifying pursuant to this
16 paragraph;

17 (c) the irrevocable exemption shall be
18 for the chief of police's or the undersheriff's term of office;
19 and

20 (d) filing an irrevocable exemption
21 shall irrevocably bar the retired member from acquiring service
22 credit for the period of exemption from membership; or

23 (2) a retired member employed by the
24 legislature for legislative session work.

25 E. At any time during a retired member's subsequent

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1 employment pursuant to Subsection C of this section, the
2 retired member may elect to suspend the pension. When the
3 pension is suspended, the following conditions shall apply:

4 (1) the retired member who is subsequently
5 employed by an affiliated public employer shall become a
6 member. The previously retired member and the subsequent
7 affiliated public employer shall make the required employee and
8 employer contributions, and the previously retired member shall
9 accrue service credit for the period of subsequent employment;
10 and

11 (2) when a previously retired member
12 terminates the subsequent employment with an affiliated public
13 employer, [he] the previously retired member shall retire
14 according to the provisions of the Public Employees Retirement
15 Act, subject to the following conditions:

16 (a) payment of the pension shall resume
17 in accordance with the provisions of Subsection A of this
18 section;

19 (b) unless the previously retired member
20 accrued at least three years of service credit on account of
21 the subsequent employment, the recalculation of pension shall:
22 1) employ the form of payment selected by the previously
23 retired member at the time of the first retirement; and 2) use
24 the provisions of the coverage plan applicable to the member on
25 the date of the first retirement; and

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1 (c) the recalculated pension shall not
2 be less than the amount of the suspended pension.

3 F. The ninety-day unemployment period otherwise
4 required by Paragraph (1) of Subsection C of this section does
5 not apply to any retired state police member or retired
6 municipal police member who, prior to January 1, 2009, is
7 reemployed as an officer by the New Mexico state police or as a
8 police officer by an affiliated public employer other than the
9 state to temporarily fill a vacant position resulting from a
10 member's activation pursuant to a federal call to active
11 military duty and deployment in response to an international
12 crisis relating to terrorism, a peacekeeping mission or any
13 other declared national emergency. The employer shall file a
14 certification verifying the reason for the employment with the
15 association within thirty days of reemployment.

16 [~~F.~~] G. The pension of a member who has three or
17 more years of service credit under each of two or more coverage
18 plans shall be determined in accordance with the coverage plan
19 that produces the highest pension. The pension of a member who
20 has service credit under two or more coverage plans but who has
21 three or more years of service credit under only one of those
22 coverage plans shall be determined in accordance with the
23 coverage plan in which the member has three or more years of
24 service credit. If the service credit is acquired under two
25 different coverage plans applied to the same affiliated public

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1 employer as a consequence of an election by the members,
2 adoption by the affiliated public employer or a change in the
3 law that results in the application of a coverage plan with a
4 greater pension, the greater pension shall be paid a member
5 retiring from the affiliated public employer under which the
6 change in coverage plan took place regardless of the amount of
7 service credit under the coverage plan producing the greater
8 pension; provided the member has three or more years of
9 continuous employment with that affiliated public employer
10 immediately preceding or immediately preceding and immediately
11 following the date the coverage plan changed. The provisions
12 of each coverage plan for the purpose of this subsection shall
13 be those in effect at the time the member ceased to be covered
14 by the coverage plan. "Service credit", for the purposes of
15 this subsection, shall be only personal service rendered an
16 affiliated public employer and credited to the member under the
17 provisions of Subsection A of Section 10-11-4 NMSA 1978.
18 Service credited under any other provision of the Public
19 Employees Retirement Act shall not be used to satisfy the
20 three-year service credit requirement of this subsection."